SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 103

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

TRUCK DRIVERS LOCAL UNION No. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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I [File endorsement omitted]

In the United States Court of Appeals for the Second Circuit

No. —

TRUCK DRIVERS LOCAL UNION NO. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. OF L., PETITIONER

AND

THE NATIONAL LABOR RELATIONS BOARD, RESPONDENTS

PETITION FOR REVIEW OF ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed February 3, 1955.

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

The Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., files this petition on behalf of itself and its members, employees of the various employers hereinafter mentioned, pursuant to the provisions of Section 10 (f) of the Labor-Management Relations Act of 1947 (61 Stat. 136; 29 U. S. C. Sec. 160 (f)) for a review of the decision and order of the National Labor Relations Board entered at Washington D. C. on July 26, 1954, dismissing the complaint, in which the petitioner was
II the charging party, and Buffalo Linen Supply Company; Famous Linen Supply Company, Inc.; Buffalo General Laundries Corporation; Modern Linen Supply Company, Morgan Linen Supply, Inc.; The Office Towel Supply Company, Inc.; Walkers Laundry and Linen Supply; and Linen and Credit Exchange, an unincorporated association, were respondents, N. L. R. B. Case No. 3-CA-694.

Linen and Credit Exchange is an unincorporated association consisting of the above-mentioned corporations, and Frontier Linen Supply, Inc.

In support of this petition, Truck Drivers Local Union No. 449 respectfully shows:

I

Jurisdiction

Petitioner is an unincorporated association consisting of seven or more persons and a labor organization within the meaning of Section 2 (5) of the Labor Management Relations Act of 1947. Its principal office and place of business is in the city of Buffalo, County of Erie, State of New York where it is the collective bargaining agent of the employees of the members of Linen and Credit Exchange, among others.

As will hereinafter more fully appear, the unfair labor practices of the members, excepting Frontier Linen Supply, Inc., (hereinafter referred to as Frontier), of Linen and Credit Exchange, (hereinafter referred to as the Exchange), were committed and occurred within the County of Erie, State of New York, and within the jurisdiction of this Court. This Court, has therefore, jurisdiction of this petition by virtue of Section 10 (f) of the Labor-Management Relations Act of 1947.

III II

Statement of Proceeding

The Exchange, acting for its members, does and has for some time recognized Local 449 as the exclusive bargaining agent for all of its employees.

A collective bargaining agreement dated April 30, 1952, between the Exchange and the Union, each for its members, stated that such agreement would run until April 20, 1953, and from year to year thereafter unless a 60 day written notice of a desire to change should be given by either party before any expiration date. The Union served the required notice and negotiations began sometime in March, 1953. On May 26, 1953, the employees at Frontier went on strike. On the night of May 26, 1953, at a negotiation meeting and at one or two subsequent meetings, the Exchange informed the Union that the employees of the

other members of the Exchange were locked out because of the strike at Frontier and that if Local 449 would withdraw its picket line and cease the strike at Frontier, the employees of the other members of the Exchange would be permitted to return to work.

On June 3, 1953, an agreement for a new contract was reached and thereupon the strike and picket line at Frontier were terminated.

On July 2, 1953, the General Counsel of the Board issued a complaint, based on charges filed by petitioners herein, alleging in substance that the Exchange had engaged in unfair labor practices proscribed by Section 8 (a) (3) and 8 (a) (1) of the Labor Management Relations Act of 1947, hereinafter referred to as the Act, by laying off the employees because of their union membership or their participation in union or other concerted activities.

IV The employers answering through the Exchange denied that the facts constituted the commission of unfair labor practices.

A hearing was had in Buffalo, New York on September 8, 1953, and no evidence was offered by any party and facts as related were established by admission in the answer of the Exchange and by stipulation at the hearing.

In November, 1953, the Trial Examiner for the Board issued an Intermediate Order containing findings of fact and conclusions of law. In substance he found that the locking out of the employees under the facts constituted an unfair labor practice as charged, and recommended the relief, typical and appropriate to such a finding, including the back pay awards to the employees locked out, and on whose behalf this petition is made.

The National Labor Relations Board, the respondent herein, adopted the findings of fact, but concluded that the strike of one member of a multi-employer unit, *per se*, made the act of the other employer members in locking out their employees, defensive and privileged in nature, absent evidence of anti-union motivation. *Citing Leonard, et al. d/b/a Davis Furniture Company et al. v. N. L. R. B.*, 205 F. 2d 355 C. A. 9. Whereupon, on July 26, 1954, the Board, with Member, Abe Murdock dissenting, dismissed the complaint.

V III

Assignments of Error

Petitioner, as a basis for review, makes the following assignments of error, to wit:

1. The Board's dismissal of the complaint herein is contrary to the law and is not supported by any substantial evidence.

2. The Board's refusal to find as conclusions of fact and conclusions of law the commission of the unfair labor practice alleged in the complaint is erroneous, contrary to law, without substantial evidence and contrary to the evidence set forth in the record.

3. The evidence provides no reasonable or substantial basis for a finding that the lockout of employees was defensive and privileged in nature rather than retaliatory and unlawful.

4. The Board erred in concluding that a group of employers can lockout their employees solely because of a strike at the plant of another associated with them in collective bargaining.

5. The Board erred in concluding that the lockout of employees under the facts in this case was for just cause.

6. The Board erred in concluding that a lockout of employees can be justified under the Labor Management Relations Act of 1947.

VI IV

Prayer

WHEREFORE, petitioner prays for a review of the decision, findings and order of the National Labor Relations Board and that:

1. A copy of this petition be served upon respondents;
2. That said decision, findings and order be in each and all respects, annulled and set aside;

3. That petitioner shall have such other and further relief as may be just and proper in the premises.

McMAHON & CROTTY,
Attorneys for Petitioner,
Office and P. O. Address,
1028 Liberty Bank Building,
Buffalo, New York,
By PETER J. CROTTY, ESQ.

VII In the United States Court of Appeals for the Second Circuit

[Title omitted]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD—Filed February 10, 1956

To the Honorable, the Judges of the United States Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 141, *et seq.*), files this answer to the petition to review and set aside an order of the Board.

1. The Board admits the allegations contained in paragraph 1 of the petition for review, except that the Board denies that any of the conduct referred to therein constituted unfair labor practices violative of the National Labor Relations Act, as amended.

2. Answering the allegations contained in paragraph II of the petition for review, the Board prays reference to the certified copy of the entire record of the proceedings before the Board, filed herein, for a full and exact statement of the pleadings, evidence, exhibits, rulings, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter before the Board.

3. The Board denies each and every allegation of error contained in paragraph II of the petition for review,
VIII and avers that its order is proper in all respects.

WHEREFORE, the Board respectfully prays this Honorable Court that said petition be denied.

MARCEL MALLET-PREVOST,
Assistant General Counsel,
National Labor Relations Board.

Dated at Washington, D. C., this 9th day of February, 1955.

IX [File endorsement omitted.]

1 BEFORE NATIONAL LABOR RELATIONS BOARD

In the Matter

of

BUFFALO LINEN SUPPLY COMPANY; FAMOUS LINEN SUPPLY COMPANY, INC., BUFFALO GENERAL LAUNDRIES CORP., MODERN LINEN SUPPLY COMPANY; MORGAN LINEN SUPPLY, INC.; THE OFFICE TOWEL SUPPLY COMPANY, INCORPORATED; WALKERS LAUNDRY AND LINEN SUPPLY; AND LINEN AND CREDIT EXCHANGE (Unincorporated),

and

TRUCK DRIVERS LOCAL UNION NO. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.

Case No. 3-CA-694

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

5.28.53 Charge against employers filed.
6.23.53 First amended charge against employers filed.
7. 2.53 Complaint issued by the Regional Director.
7. 2.53 Notice of Hearing issued by the Regional Director.
7. 8.53 Respondent Companies' Answer filed.
9. 8.53 Order issued designating George A. Downing Trial Examiner for the Board.
9. 8.53 Hearing opened.
9. 8.53 Hearing closed.
11.10.53 Trial Examiner's Intermediate Report and Recommended Order issued.

11.12.53 Erratum correcting Intermediate Report issued.
12.14.53 Respondent Companies' Exceptions to the Intermediate Report filed.
7.26.54 Decision and Order issued by the Board.

2 BEFORE NATIONAL LABOR RELATIONS BOARD

COMPLAINT—Filed July 2, 1953

It having been charged by Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, that Buffalo Linen Supply Co., herein called Respondent Buffalo Linen, Famous Linen Supply Co., Inc., herein called Respondent Famous, Buffalo General Laundries Corp. (Merchants Linen Supply Division), herein called Respondent Buffalo General, Modern Linen Supply Company, herein called Respondent Modern, Morgan Linen Supply, Inc., herein called Respondent Morgan, The Office Towel Supply Company, Incorporated, herein called Respondent Office Towel, Walkers Laundry and Linen Supply, herein called Respondent Walkers, and Linen and Credit Exchange (Unincorporated), herein called Respondent Exchange, and collectively herein called Respondents, have engaged in, and are engaging in, certain unfair labor practices affecting commerce as set forth in the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Third Region, designated by the Board's Rules and Regulations—Series 6, as amended, Section 102.15, hereby issues this Complaint and alleges as follows:

I

Respondents, Buffalo Linen, Famous, Buffalo General, Modern, Morgan, Office Towel and Walkers are, and at all times herein material have been, corporations duly organized under and existing by virtue of the laws of the State of New York, and are, and at all times herein material have been, members of Respondent Exchange.

3 II

Respondent Buffalo General, at all times hereinafter mentioned, has maintained its principal office and place

of business at 238 Fargo Avenue, Buffalo, New York and operates plants located at 714 Northland Avenue and 21 Northland Avenue, Buffalo, New York, where it is now, and continuously has been, engaged in the laundry and dry cleaning business and in furnishing, supplying, and servicing industrial and commercial enterprises with cotton and linen uniforms, towels and other related products. The plant herein involved is located at 21 Northland Avenue, Buffalo, New York, and is known as the Merchants Linen Supply Division.

Respondent Buffalo General, in the course and conduct of its business operations during the calendar year 1952, a representative period, purchased soaps, detergents, water softeners, cotton and linen goods, towels, uniforms and other supplies and equipment valued at in excess of $500,000, all of which was purchased outside the State of New York and shipped directly to its places of business in Buffalo, New York. During the same period, Respondent Buffalo General performed laundry and dry cleaning services for, and furnished, supplied and serviced industrial and commercial enterprise with cotton and linen towels, uniforms, and other related items for which it received in excess of $1,000,000, in excess of 20 per cent of which was received from industrial and commercial enterprises which annually ship goods, merchandise or equipment valued in excess of $25,000 outside the State of New York.

4 III

Respondent Office Towel, at all times hereinafter mentioned, has maintained its principal office and place of business in Buffalo, New York, where it is now, and continuously has been, engaged in the furnishing, supplying and servicing industrial and commercial enterprises with cotton and linen towels, uniforms and other related items.

Respondent Office Towel, in the course and conduct of its business operations during the calendar year 1952, a representative period, purchased soaps, detergents, water softeners, cotton and linen goods, towels, uniforms and other supplies and equipment valued at approximately $150,000, of which approximately 50 per cent was purchased outside the State of New York and shipped directly to its place of business in Buffalo, New York. During the same

period, Respondent Office Towel furnished, supplied, and serviced industrial and commercial enterprises with cotton and linen towels, uniforms and other related items for which it received income in excess of $500,000, in excess of 20 per cent of which was received from industrial and commercial enterprises which annually ship goods, merchandise or equipment valued in excess $25,000 outside the State of New York.

IV

Respondent Morgan, at all times hereinafter mentioned has maintained its principal office and place of business at 325 Louisiana Street, Buffalo, New York and operates plants located in Buffalo, Niagara Falls and Dunkirk, New York where it is now and continuously has been engaged in the furnishing, supplying and servicing industrial and commercial enterprises with cotton and linen uniforms, towels and other related items.

Respondent Morgan, in the course and conduct of its business operations during the calendar year 1952, a representative period, purchased soaps, detergents, water softeners, cotton and linen goods, towels, uniforms and other supplies and equipment valued at approximately $150,000, of which approximately 50 per cent was purchased outside the State of New York and shipped directly to its places of business in Buffalo, Niagara Falls and Dunkirk, New York. During the same period, Respondent Morgan furnished, supplied, and serviced industrial and commercial enterprises with cotton and linen uniforms, towels and other related items for which it received income in excess of $500,000, in excess of 20 per cent of which was received from industrial and commercial enterprises which annually ship goods, merchandise or equipment valued in excess of $25,000 outside the State of New York.

V

Respondents Buffalo Linen, Famous, and Modern at all times hereinafter mentioned have maintained their principal offices and places of business in Buffalo, New York, and Respondent Walkers has maintained its principal office and place of business in Niagara Falls, New York, where they all are now and continuously have been engaged in furnishing, supplying and servicing industrial and commer-

cial enterprises with cotton and linen towels, uniforms and other related items.

Each of the Respondents named in the above paragraph, in the course and conduct of its business operations
6 during the calendar year 1952, a representative period, purchased soaps, detergents, water softeners, cotton and linen goods, towels, uniforms and other supplies and equipment valued at in excess of $100,000, all of which was purchased outside the State of New York and shipped directly to its place of business in New York State. During the same period each of the aforementioned Respondents furnished, supplied and serviced industrial and commercial enterprises with cotton and linen towels, uniforms and other related items for which it received income in excess of $200,000, in excess of 25 per cent of which was received from industrial and commercial enterprises which annually ship goods, merchandise and equipment valued in excess of $25,000 per year outside the State of New York.

VI

Respondent Linen and Credit Exchange (unincorporated) is and has been for many years a voluntary association consisting of approximately eight (8) members who are employers engaged in furnishing, supplying and servicing industrial and commercial enterprises with cotton and linen towels, uniforms and other related items. At all times herein mentioned Respondent Exchange has maintained its principal office and place of business at Buffalo, New York. One of the purposes of Respondent Exchange is to obtain uniformity and stability in labor relations between its members and the various labor organizations representing employees of its members. Among the activities of Respondent Exchange are the conduct of labor negotiations and the execution of labor contracts on behalf of all members of Respondent Exchange including Respondents Buffalo Linen, Famous, Buffalo General, Modern, Morgan,
7 Office Towel and Walkers, with unions representing employees of the various members of Respondent Exchange. Respondents Buffalo Linen, Famous, Buffalo General, Modern, Morgan, Office Towel and Walkers are now, and have been for many years, members of the Buffalo Linen and Credit Exchange.

The members of Respondent Exchange, in the course and conduct of their business operations during the calendar year 1952, a representative period, purchased soaps, detergents, water softeners, cotton and linen goods, towels, uniforms and other supplies and equipment valued in excess of $2,000,000, in excess of 80 per cent of which was purchased outside the State of New York and shipped directly to their places of business in New York State. During the same period, the members of Respondent Exchange supplied and serviced industrial and commercial enterprises with cotton and linen towels, uniforms and other related items for which they received income in excess of $4,000,000 in excess of 20 per cent of which was received from industrial and commercial enterprises which annually ship goods, merchandise or equipment valued in excess of $25,000 outside the State of New York.

VII

Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, herein called the Union, is, and at all times material herein has been, a labor organization within the meaning of Section 2 (5) of the Act.

8

VIII

Respondents did on or about May 27, 1953 discharge those employees whose names are set forth in Appendix A annexed hereto and made a part hereof and did thereafter fail or refuse to reinstate them until June 3, 1953.

IX

Respondents did discharge and thereafter did fail or refuse to reinstate the employees, as alleged in Paragraph VIII above, for the reason that they joined or assisted the union or engaged in other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

X

Respondents, by the acts described above in Paragraph VIII and for the reasons set forth in Paragraph IX above, did discriminate and are discriminating in regard to the

hire or tenure or terms or conditions of employment of the employees named above in Paragraph VIII and thereby did engage in, and are engaging in, unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

XI

By the acts described above in Paragraphs VIII and IX, and by each of said acts, Respondents did interfere with, restrain and coerce, and are interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

9

XII

The acts of Respondents, described above in Paragraphs VIII and IX, occurring in connection with the operations of Respondents described above in Paragraphs I, II, III, IV, V and VI have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIII

The acts of Respondents, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3), and Section 2 (6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board on behalf of the Board, by the Regional Director for the Third Region on this 2nd day of July, 1953, issues this Complaint against Buffalo Linen Supply Co., Famous Linen Supply Co., Inc., Buffalo General Laundries Corp., Modern Linen Supply Company, Morgan Linen Supply, Inc., The Office Towel Supply Company, Incorporated, Walkers Laundry and Linen Supply, and Linen and Credit Exchange (unincorporated), Respondents herein.

MERLE D. VINCENT, JR.,
Regional Director,
National Labor Relations Board,
Third Region.

10 APPENDIX A TO COMPLAINT

Buffalo Linen Supply Co. and Linen and Credit Exchange did discharge:

Joseph Homer
Joseph Gerace

Famous Linen Supply Co., Inc. and Linen and Credit Exchange did discharge:

Philip Trifiro
Carl Maiorana
Sam Scibetta
Al Scibetta
Hank Legatzke
Norm Axford
Don Herberger
John Feraci

Buffalo General Laundries Corp. (Merchants Linen Supply Division) and Linen and Credit Exchange did discharge:

James Chambers
Robert Thompson
John H. Monaco
Ray Butler
James J. Finnerty
Ken Beiter
Charles Redanz
Edward Johnson
William Mullane

Modern Linen Supply Company and Linen and Credit Exchange did discharge:

Charles Scibetta
Francis Gigante
Robert Pabeljack

Morgan Linen Supply, Inc. and Linen and Credit Exchange did discharge:

Matty Comella
Joe Zarcone
Ed Kinney
George Meisenburg
John Calabro
Charles Sanfilippo
Tony Muecio
Dominic Guericio
Ed Wojciak
Carmen Mambrino
Angelo Abrams
Mike De Angelo
Leonard Pinkowski
Leonard Kuzora

11

John Balcerzak
Sam Greco
Emil Guglielmo
Louis Butkowski
James Maggio
Richard Kalfas
Donald Dugan
Joe Verone
Charles Seward

The Office Towel Supply Company, Incorporated and Linen and Credit Exchange did discharge:

Earl Wagner	John Christiano
J. Dix	Angelo Gerace
Leonard Slawiak	Pascal Ipolito
Harry Thorpe	Wilfred Monette
Gordon Ford	James Irwin
Bill Bailey	Sylvester Eich
John MacGregor	Eugene Monette
Howard Walmuth	James Shufelt
	Henry Kujawa

Walkers Laundry and Linen Supply and Linen and Credit Exchange did discharge:

Felice Ruggiero	Paul Pascuzzi
Ted Colaty	Harry Pitcher

BEFORE NATIONAL LABOR RELATIONS BOARD

ANSWER—FILED JULY 8, 1953

Respondents for the answer to the complaint in the above entitled proceeding:

1. Admit the allegations contained in paragraphs I, II, III, IV, V, VI, and VII.

2. Denies the allegations contained in paragraphs VIII, IX, X, XI, XII, and XIII.

12 3. Denies all other allegations of said complaint not otherwise admitted, denied or controverted.

WHEREFORE, respondents demand dismissal of the complaint herein, together with such other relief as may be just and proper.

The foregoing answer is submitted on behalf of all respondents by the respondent.

LINEN AND CREDIT EXCHANGE,
Morgan Building,
Buffalo, New York.
By JOHN A. MULLANE,
Secretary.

Duly sworn to by John A. Mullane, jurat omitted in printing.

13 [Title Omitted.]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
THIRD REGION

STENOGRAPHIC TRANSCRIPT OF TESTIMONY AT HEARING OF SEPTEMBER 8, 1953

350 Ellicott Square Building,
Buffalo, New York,
Tuesday, September 8, 1953.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a. m., d. s. t.
Before:

George A. Downing, Esq., Trial Examiner.

APPEARANCES:

William J. Cavers, Esq., 350 Ellicott Square Building, Buffalo, New York, appearing as counsel for the General Counsel of the National Labor Relations Board.

14 Louis Borins, Esq., Borins & Hoffman, 922 Rand Building, Buffalo 3, New York, appearing on behalf of the Respondents.

Mr. Donald E. Wells, 475 Franklin Street, Buffalo, New York, appearing on behalf of Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, the Charging Party.

• • • • •

MOTIONS TO AMEND THE COMPLAINT AND RULINGS THEREON

• • • • •

Mr. Cavers: Mr. Examiner, at this time the General Counsel makes the following motions: The first motion is to amend Paragraph VIII of the Complaint to strike from the first line of Paragraph VIII the third to the last word in that line, the word "discharge" and to insert in place of the word "discharge" the word "layoff" so that after amendment Paragraph VIII will read: "Respondents did

on or about May 27, 1953 lay off those employees whose names are set forth in Appendix A annexed hereto and made a part hereof and did thereafter fail or refuse to reinstate them until June 3, 1953."

The second motion the General Counsel moves to amend Paragraph IX of the Complaint by striking from the first line thereof the third word "discharge" and insert in place of that word the words "lay off", so that after amendment Paragraph IX will read: "Respondents did lay off and thereafter did fail or refuse to reinstate the employees, as alleged in Paragraph VIII above, for the reason that they joined or assisted the union or engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

Trial Examiner Downing: Any objections?

Mr. Borins: I have no objection, Mr. Examiner. May I proceed from that point on, sir?

Trial Examiner Downing: Any objection from the Union?

Mr. Wells: No.

Trial Examiner Downing: The amendments will be allowed.

Mr. Borins: The Linen and Credit Exchange as members whom I represent admit amended Paragraph VIII and deny amended Paragraph IX.

Trial Examiner Downing: Any objection to the proposed amendment of the Answer?

Mr. Cavers: No objection from the General Counsel.

Trial Examiner Downing: Any objection from the Union?

Mr. Wells: No.

Trial Examiner Downing: The amendment will be allowed.

STIPULATIONS

Mr. Cavers: In an off the record discussion, Mr. Examiner, it was stipulated by and among counsel for the General Counsel, the counsel for the Respondents and the Charging Party as follows: The employees referred to in Paragraph VIII of the Complaint were laid off for the reason that their bargaining representative, Local 449, had engaged in a strike on May 26, 1953 at the Frontier Linen Supply, Inc., Buffalo, New York, also a member of the Linen and

Credit Exchange, the bargaining representative for all of its employer members.

Is that stipulation agreeable to the Respondents?

Mr. Borins: It is, sir.

16 Trial Examiner Downing: To the Charging Party?

Mr. Wells: Yes, sir.

Trial Examiner Downing: That stipulation will be received.

• • • • •

Mr. Cavers: Frontier Linen Supply, Inc., Buffalo, New York and Respondents Buffalo Linen, Famous, Buffalo General, Modern, Morgan, Office Towel and Walkers have for the past 13 years been members of Respondent Linen and Credit Exchange (Unincorporated). During this time Respondents and Frontier Linen Supply, Inc., have recognized Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL as the exclusive bargaining representative of all their employees employed as truck drivers, and have had successive collective bargaining agreements with Local No. 449 covering wages, hours and other terms and conditions of employment of the truck drivers.

These collective bargaining agreements have been arrived at through negotiations conducted between representatives of the Linen and Credit Exchange, acting on behalf of all its members, including Respondents and Frontier Linen Supply, Inc., and representatives of Local 449 acting for the truck drivers.

Whenever a proposed collective bargaining agreement was agreed upon it was submitted for majority approval to the membership of the Linen and Credit Exchange and Local 449. After a majority of the membership of the Linen and Credit Exchange and Local 449 approved a collective bargaining agreement, that agreement was signed by each member of the Linen and Credit

17 Exchange and by the Secretary-Treasurer and Business Agent for Local 449 and conformed copies were given all signers.

On April 30, 1952 the Linen and Credit Exchange and Local 449 on behalf of their respective members executed a collective bargaining agreement covering the wages, hours

and other terms and conditions of employment of the truck drivers employed by the members of the Exchange. This agreement, by its terms, provided that it shall continue in full force and effect to midnight of the 30th day of April, 1953, and shall continue from year to year thereafter, unless a 60-day written notice of a desire to change shall be given either by the Employer or the Union before the first or any subsequent expiration date. 60 days prior to the first expiration date Local 449 served the required notice of a desire to change the agreement. Negotiations for a new agreement began some time in March of 1953 between Linen and Credit Exchange acting on behalf of its members and Local 449 acting on behalf of its member truck drivers.

Is that stipulation agreeable to the Respondents?

Mr. Borins: Yes, sir.

Mr. Cavers: And to the Charging Party?

Mr. Wells: Yes, sir.

• • • • •

Mr. Cavers: I would like to make a further statement to which I think the Respondents and the Charging Party may also stipulate. The stipulation which we have just read into the record, Mr. Examiner, states that the negotiations between the Linen and Credit Exchange on behalf of its employer members and Local 449 on behalf of
18 the truck driver employees of the members of the Exchange began in March of 1953.

These negotiations continued off and on until May the 26th of 1953 at which time Local 449 called its members who were employed as truck drivers for the Frontier Linen Supply, Inc. on strike and established a picket line on that day at Frontier Linen Supply only. That same night, May the 26th, the Linen and Credit Exchange and Local 449 had a meeting and during this meeting and at one or two subsequent meetings the Respondents told Local 449 representatives that the employees of the Respondents were locked out because of the strike at the Frontier Linen Supply, Inc., and that if Local 449 would withdraw its picket line and cease the strike at Frontier Linen Supply, Inc. they would permit the employees of the Respondents to return to work.

Is that stipulation agreeable to you, Mr. Borins?

Mr. Borins: I am not quite clear, Mr. Examiner, as to whether that stipulation was made only on the first day of the strike or on subsequent days. I wasn't present the first day of the strike, but I was at all bargaining sessions after that and I don't recall of such concessions being made, do you?

Mr. Wells: It was made on the first meeting, on the 26th, definitely.

Mr. Borins: Yes, I agree to that.

Mr. Wells: Yes, it was made at a later date in the office of Morgan Linen Supply in Buffalo and also to one of the drivers employed by Morgan, not in my presence—the steward, in fact, had been told by the management of the Morgan Linen Supply Company; also it was told to myself by Mr. Vanini.

19 Mr. Borins: May I interrupt at that point.

Trial Examiner Downing: Just a moment.

Mr. Borins: May I interrupt at that point. I just raised the question. I knew it was made the first day. That was in the statement made by Mr. Cavers. Whether it was made subsequent I say I don't know. If Mr. Wells says it was it is all right with me. You don't have to particularize.

Mr. Wells: Well, that is Modern Linen Supply, Mr. Examiner——

Trial Examiner Downing: As I understand it this colloquy is for the purpose of straightening out the stipulation?

Mr. Borins: That is right.

Trial Examiner Downing: Now, in light of the colloquy, Mr. Borins, are you willing to stipulate, or to accept the stipulation as originally stated by Mr. Cavers?

Mr. Borins: Yes, I am, sir.

Trial Examiner Downing: Is that acceptable to you, sir?

Mr. Wells: Yes, sir.

Trial Examiner Downing: The stipulation will be received.

Mr. Borins: Mr. Cavers, would you add to that stipulation the fact that Frontier was also a member of Linen and Credit Exchange, had not been bargaining independently, but had been bargaining through Linen and Credit Exchange? I want to be very clear on that. I am not sure whether the Trial Examiner is or not.

Trial Examiner Downing: I thought that was included,

but if not with agreement of counsel Mr. Borins' statement will be accepted as a further stipulation.

20 Mr. Cavers: Yes, it will be agreeable to the counsel for the General Counsel.

Mr. Wells: It will, yes.

Trial Examiner Downing: All right, sir.

Mr. Cavers: On June the 3rd, 1953 the Linen and Credit Exchange and Truck Drivers Local 449 reached an agreement for a new contract. Local 449 thereupon withdrew its pickets from the Frontier Linen Supply, Inc. and terminated its strike, whereupon, the Respondents——

Mr. Borins: May I suggest that all members of the Linen and Credit Exchange went back to work——

Mr. Cavers: Employees of the Respondents went back to work. Is that stipulation also agreeable?

Mr. Borins: Yes.

Mr. Cavers: To the Charging Party?

Mr. Wells: Yes.

Mr. Borins: It is Respondents and Frontier.

Mr. Cavers: Yes.

Mr. Borins: Mr. Examiner, Frontier is not a party here.

Trial Examiner Downing: I understand. The stipulation will be received.

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Mr. Borins: I would like to offer this statement as a stipulation that with the expiration of the contract between the members of the Linen and Credit Exchange in 1949 Local 449 caused a strike to be called at all members of the Exchange which strike continued one day, but on completion of the contract in 1949 all of the employees returned to work. What I am trying to point out, Mr. Examiner, is that there was a strike at all members in 1949. That

21 might be received as an addition to the other stipulation.

Mr. Cavers: That stipulation is agreeable to the General Counsel, Mr. Examiner.

Trial Examiner Downing: To the Union?

Mr. Wells: Yes, sir.

Trial Examiner Downing: It will be received.

Mr. Borins: Respondent has nothing further to present.

Trial Examiner Downing: That concludes the evidence then, I take it, gentlemen?

Mr. Cavers: That is correct, Mr. Examiner.

Trial Examiner Downing: All of the facts have been stipulated. Do you wish to argue the case orally?

Mr. Borins: Mr. General Counsel, I will waive it if the General Counsel does.

Mr. Cavers: The General Counsel will waive oral argument, Mr. Examiner, unless you would like oral argument.

Trial Examiner Downing: Well, I think before I would be prepared to actually get any benefit out of oral argument I would like to see these stipulations written up which would mean delaying oral argument until some time later this afternoon. I doubt if oral argument would be of much benefit prior to seeing the stipulations in writing.

Mr. Borins: Mr. Examiner, the reason I am waiving argument, very frankly I just don't know what to say. There is no dispute here as to the facts. I submit, Mr. Examiner, which is the law involved in this case. The merits——

Trial Examiner Downing: Yes, but you are in a field in which there is considerable controversy at the moment; the Davis Furniture Case and Morand case——

Mr. Borins: Yes, sir. I don't want to participate in any coin flip, Mr. Examiner, at this moment.

22 Trial Examiner Downing: I don't understand.

Mr. Borins: Well, simply this, that there is considerable dispute as to what the law of the land is at the moment. I just don't want to get into that dispute. We feel that we are right in our position. The Union feels that we are wrong. The Board has made a charge here; this case needs a decision. I don't know that oral argument would present anything.

Trial Examiner Downing: Do you care to answer this question—under the——

Mr. Borins: May we go off the record on this?

Trial Examiner Downing: Yes. Off the record.

(Discussion off the record.)

Trial Examiner Downing: On the record. I take it then that you gentlemen don't care to argue at the present time, and as I understand it, Mr. Reporter, you will not be able to type this record any time soon. Then do you waive oral argument, gentlemen?

Mr. Borins: Respondents do, sir.

Mr. Cavers: General Counsel will also waive.
Mr. Wells: Yes, sir.

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BEFORE NATIONAL LABOR RELATIONS BOARD

Intermediate Report and Recommended Order
Nov. 10, 1953

STATEMENT OF THE CASE

This proceeding, brought under Section 10 (b) of the National Labor Relations Act as amended (61 Stat. 136), was heard in Buffalo, New York, on September 8, 1953, pursuant to due notice. The complaint, issued on July 2,
23 1953, by the General Counsel of the National Labor Relations Board [1] and based on charges duly filed and served, alleged in substance that Respondents had engaged in unfair labor practice proscribed by Section 8 (a) (3) and (1) of the Act, by laying off the employees whose names are listed in Appendix A hereto from on or about May 27, 1953 to June 3, 1953, because of their union membership or their participation in union or other concerted activities. Respondents, answering through Linen and Credit Exchange denied the commission of unfair labor practices as alleged.

All parties were represented at the hearing by counsel or by representatives and were afforded full opportunity to participate in the hearing and to file briefs and proposed findings of fact and conclusions of law. No evidence was offered by any party; the facts summarized below are established either by admissions in Respondents' answer or by stipulation of the parties at the hearing. Respondents have filed a brief.

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[1] The General Counsel and his representative at the hearing are referred to herein as the General Counsel and the National Labor Relations Board as the Board. The above-named Respondents are referred to herein as Respondents and the charging Union as the Union. The summary of the pleadings made herein includes amendments made at the hearing.

Upon the entire record in the case the undersigned makes the following:

FINDINGS OF FACT

I. The Business of Respondents

The seven linen supply companies named in the caption hereto are New York corporations, which, together with Frontier Linen Supply, Inc., of Buffalo, comprise the membership of the Respondent Linen and Credit Exchange, which is, in turn, a voluntary unincorporated association of employers who are engaged in furnishing, supplying, and servicing industrial and commercial enterprises with cotton and linen towels, uniforms, and related items. Each of the corporate Respondents is engaged in the linen supply business as described, and each operates one or more plants either in Buffalo, Dunkirk, or Niagara Falls, New York. Jurisdictional allegations of the complaint, admitted by the answer, establish that each corporate Respondent is engaged in commerce within the Board's current jurisdictional standards through the volume of their extrastate purchases of materials and supplies and their services rendered to industrial and commercial concerns which annually ship goods and merchandise valued in excess of $25,000 outside the State of New York. In the aggregate, members of the Exchange purchased, in 1952, materials and supplied valued in excess of $2,000,000, of which more than 80 percent were from extrastate sources, and in the same year they rendered services in excess of $4,000,000, of which more than 20 percent were to industrial and commercial concerns as aforesaid.

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The corporate Respondents have been members of the Exchange for some 13 years. One of the purposes of the Exchange is to obtain uniformity and stability in labor relations between its members and the various labor organizations representing employees of its members; and its activities include the conducting of labor negotiations and the execution of labor contracts on behalf of all its members with unions representing employees of members.

Respondents are engaged in interstate commerce within the meaning of the Act.

II. The Labor Organization Involved

The Union is a labor organization which admits to membership employees of Respondents other than the
25 Exchange.

III. The Unfair Labor Practices

A. *Summary of Stipulated Facts*

Respondents admitted that they laid off the employees on May 27, 1953, as charged in the complaint, and did not reinstate them until June 3, 1953. Respondents denied that the layoff was because of the union membership or union or other concerted activities of the employees, but stipulated that the employees were laid off because the Union, as their bargaining representative, had engaged in a strike on May 26, 1953, at the Frontier Linen Supply Inc., a member of the Exchange, which was the bargaining representative of all its members. Frontier had not engaged independently in bargaining negotiations with the Union.

During the 13 years for which Frontier and the 7 corporate Respondents have been members of the Exchange, said Respondents and Frontier have recognized the Union as the exclusive bargaining representative of all their employees employed as truck drivers and have had successive collective bargaining agreements with Local No. 449, covering the wages, hours, and other terms and conditions of employment of the truck drivers, which agreements have been arrived at through negotiations conducted between representatives of the Exchange, acting on behalf of all its members, and representatives of the Union, acting for the truck drivers.

Whenever a proposed collective bargaining agreement was agreed upon, it was submitted for majority approval to the membership of the Exchange and the Union. After a majority of the membership of the Exchange and the Union approved such an agreement, it was signed by
26 each member of the Exchange and by the secretary-treasurer and business agent for the Union, and conformed copies were given all signers.

At the expiration of the contract between the Union and

the members of the Exchange in 1949, the Union had caused a strike to be called at all members of the Exchange, which strike lasted 1 day, but on completion of the contract in 1949, all of the employees returned to work.

On April 30, 1952, the Exchange and the Union, on behalf of their respective members, executed a collective bargaining agreement covering the wages, hours, and other terms and conditions of employment of the truck drivers employed by the members of the Exchange. This agreement by its terms provided that it should continue in full force and effect to midnight of April 30, 1953, and should continue from year to year thereafter unless a 60-day written notice of a desire to change should be given either by the employer or the Union before the first or any subsequent expiration date. Sixty days prior to the first expiration date, the Union served the required notice of a desire to change the agreement.

Negotiations for a new agreement began sometime in March of 1953 between the Exchange, acting on behalf of its members, and the Union, acting on behalf of its member truck drivers. Those negotiations continued off and on until May 26, at which time the Union called on strike its members who were employed as truck drivers for Frontier, and established a picket line on that day at Frontier only. On the night of May 26, the Exchange and the Union had a meeting, and during that meeting and one or two subsequent meetings, the Respondents informed the union representatives that the employees of the Respond-
27 ents were locked out because of the strike at Frontier, and that if the Union would withdraw its picket line and cease the strike at Frontier they would permit the employees of Respondents to return to work.

On June 3, the Exchange and the Union reached an agreement for a new contract. The Union thereupon withdrew its pickets from Frontier and terminated the strike, whereupon the employees of the Respondents went back to work.

B. *Concluding Findings*

The stipulated facts which the parties have chosen to submit present, largely in a vacuum, a case which resembles skeletally the muchly litigated *Morand* and *Davis*

cases,[2] *i.e.*, multiemployer bargaining with the Union through an employer association; a strike by the Union against one member of the association; a lockout and a layoff of employees by the other members. Yet, because of the absence of detail and the silence of the stipulation as to facts which were accorded great, if not crucial, significance at various stages of the *Davis-Morand* litigation, the present determination must turn largely on the negative, rather than on the positive, aspects of the stipulation.

Certainly, it can be said that under the rationale of the Board's decisions in the *Morand* and *Davis* cases[3]
28 (followed in the later case of *Continental Baking Co.*, 104 NLRB No. 9), Respondent's conduct was unquestionably unlawful, since it constituted reprisal against the employees because the Union, as their bargaining representative, had engaged in a lawful strike against Frontier. Thus, in the absence of evidence that strikes against other members were threatened or anticipated, that Respondents were unable to operate without assurances against being struck, that Respondents had sought and had failed to obtain such assurances, or, alternatively, assurances of adequate notice for the arrangement of their operations, it cannot be found that the lockout was defensive in nature. Stated differently, there was no showing that there were any economic considerations which justified the lockout, and none that the Respondents' motive was in fact the protection of their economic interests. Cf. *Betts-Cadillac-Olds, Inc.*, 96 NLRB 268; *International Shoe Com-*

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[2] *Morand Brothers Beverage Co.*, 91 NLRB 409; 190 F. 2d 576 (C.A. 7); 99 NLRB 1448 (on remand); 204 F. 2d 529 (C.A. 7). *Leonard et al., d/b/a Davis Furniture Co.*, 94 NLRB 279; 197 F. 2d 435 (C.A. 9); 100 NLRB 1016 (on remand); 205 F. 2d 355 (C.A. 9).

[3] The Board's views were fully explicated in those decisions, which have received widespread comment and analysis in numerous law review articles. See, *e.g.*, *Legality of the Lockout*, Koretz, Robert F., Syracuse Law Review, Spring 1953, pp. 251-273. The conclusions reached herein render unnecessary either further analysis of the Board's views or exploration of the realm of the Courts' disagreement therewith.

pany, 93 NLRB 159; *Duluth Bottling Association,* 48 NLRB 1335.

Attention is turned, then, to the question whether the Courts' decisions would dictate a different result.[4] But here, again, the stipulated facts differ so widely that it is unnecessary to speculate on the ultimate impact which those decisions may have on the Board's views as formerly expressed. Thus, present in either or both of those cases, but absent here so far as the record shows, were the following facts which were emphasized by the Courts as impelling their conclusions:

An impasse had been reached; negotiations had collapsed; the employers had exhausted the possibilities of good faith bargaining. The object of the strike in each case was to force capitulation of the struck-employer
29 to the Union's demands as made during the bargaining negotiations with the association.

In *Morand,* the Union had approved a *general* strike authorization, news of which quickly reached the employers. After the strike was called against one, the other employers notified the Union they could not operate under the threat of a strike.

In *Davis* employees of all the employers had joined in voting to call the strike, the Union had authorized its strike manager to strike successively against each employer, and the first strike was announced as the beginning of a "whipsawing" process against one after another of the remaining employers. The effects of the "whipsawing" process (*e.g.,* loss of customers and good will) were held to justify the lockout and layoff in protection of the employers' economic interests.

Since the Courts' disagreement with the Board stemmed from facts not here shown to be present, the Board's decisions—which here stand as *a fortiori* authority—remain as conclusive precedents.

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[4] In *Morand,* the Court ultimately sustained the Board's finding that the employers had unlawfully *discharged* their employees, though it expressed sharp disagreement with the Board's alternative finding that, viewed as effectuating only a layoff, the lockout was also unlawful. (204 F. 2d 529)

It is, therefore, concluded and found that by laying off the employees whose names are listed in Appendix A hereof, from May 27 to June 3, 1953, inclusive, Respondents discriminated against them to discourage participation in union or other concerted activities for the purposes of collective bargaining or other mutual aid or protection, and thereby committed an unfair labor practice proscribed by Section 8 (a) (3) and (1).

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

30 CONCLUSIONS OF LAW

1. Respondents' activities set forth in Section III above, occurring in connection with Respondents' operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

2. The Union is a labor organization within the meaning of Section 2 (5) of the Act.

3. By laying off the respective employees whose names are listed in Appendix A, hereof, from May 27 to June 3, 1953, inclusive, Respondents, respectively, discriminated in regard to their hire and tenure of employment to discourage membership in the Union, and thereby engaged in an unfair labor practice proscribed by Section 8 (a) (3) and (1) of the Act, and affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

THE REMEDY

Having found that Respondents have engaged in an unfair labor practice, it will be recommended that they cease and desist therefrom and take affirmative action designed to effectuate the policies of the Act.

RECOMMENDATIONS

Upon the basis of the above findings and conclusions, it is recommended that Respondents, their officers, agents, successors, and assigns, shall:

1. Cease and desist from discouraging membership in the Union, or in any other labor organization of their
31 employees, by laying them off or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

2. Take the following affirmative action:

(a) Make whole, respectively, each of the employees whose names are listed in Appendix A hereto, for any loss of pay he may have suffered by payment to him of a sum of money equal to that which he normally would have earned from May 27 to June 3, 1953, inclusive, less his net earnings during said period (*Crossett Lumber Company*, 8 NLRB 440, 497-8);

(b) Post in their respective plants copies of the notice attached hereto and marked Appendix B. Copies of said notice to be furnished by the Regional Director for the Third Region shall, after being signed by Respondents' representatives, be posted by Respondents immediately upon receipt thereof and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the Third Region, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, what steps Respondents have taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, Respond-
32 ents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondents to take the action aforesaid.

Dated at Washington, D. C., this day of November 1953.

GEORGE A. DOWNING,
Trial Examiner.

33 APPENDIX A TO INTERMEDIATE REPORT AND RECOMMENDED ORDER

Listed below under the names of the respective Respondents are the names of the employees who were laid off by said Respondents on May 27 and reinstated on June 3, 1953.

Buffalo Linen Supply Company and Linen and Credit Exchange

Joseph Homer
Joseph Gerace

Famous Linen Supply Co., Inc., and Linen and Credit Exchange

Philip Trifiro
Carl Maiorana
Sam Scibetta
Al Scibetta
Hank Legatzke
Norm Axford
Don Herberger
John Feraci

Buffalo General Laundries Corp. (Merchants Linen Supply Division) and Linen and Credit Exchange

James Chambers
Robert Thompson
John H. Monaco
Ray Butler
James J. Finnerty
Ken Beiter
Charles Redanz
Edward Johnson
William Mullane

Modern Linen Supply Company and Linen and Credit Exchange

Charles Scibetta
Francis Gigante
Robert Pabeljack

Morgan Linen Supply, Inc., and, Linen and Credit Exchange

Matty Comell
Joe Zarcone
Ed Kinney
George Meisenburg
John Calabro
Dominic Guericio
Ed Wojciak
Carmen Mambrino
Angelo Abrams
Mike De Angelo

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Charles Sanfilippo	Leonard Pinkowski
Tony Muecio	Leonard Kuzora
John Balcerzak	James Maggio
Sam Greco	Richard Kalfas
Emil Guglielmo	Donald Dugan
Louis Butkowski	Joe Verone

Charles Seward

The Office Towel Supply Company, Incorporated, and Linen and Credit Exchange

Earl Wagner	John Christiano
J. Dix	Angelo Gerace
Leonard Slawiak	Pascal Ipolito
Harry Thorpe	Wilfred Monette
Gordon Ford	James Irwin
Bill Bailey	Sylvester Eich
John MacGregor	Eugene Monette
Howard Walmuth	James Shufelt

Henry Kujawa

Walkers Laundry and Linen Supply and Linen and Credit Exchange

Felice Ruggiero	Paul Pascuzzi
Ted Colaty	Harry Pitcher

The Office Towel Supply Co., Inc., and *Linen and Credit Exchange:*

Earl Wagner	John Christiano
J. Dix	Angelo Gerace
Leonard Slawiak	Pascal Ipolito
Harry Thorpe	Wilfred Monette
Gordon Ford	James Irwin
Bill Bailey	Sylvester Eich
John MacGregor	Eugene Monette
Howard Walmuth	James Shufelt

Henry Kujawa

35 *Walkers Loundry and Linen Supply* and *Credit Exchange:*

Felice Ruggiero	Paul Pascuzzi
Ted Colaty	Harry Pitcher

All of our employees are free to become or refrain from becoming members of the above-named Union or any other labor organization.

BUFFALO LINEN SUPPLY CO.

By .....
(Representative) (Title)

FAMOUS LINEN SUPPLY CO. INC.

By .....
(Representative) (Title)

BUFFALO GENERAL LAUNDRIES CORP.

By .....
(Representative) (Title)

MODERN LINEN SUPPLY COMPANY

By .....
(Representative) (Title)

MORGAN LINEN SUPPLY, INC.

By .....
(Representative) (Title)

THE OFFICE TOWEL SUPPLY COMPANY, INCORPORATED

By .....
(Representative) (Title)

WALKERS LAUNDRY AND LINEN SUPPLY

By .....
(Representative) (Title)

LINEN AND CREDIT EXCHANGE

By .....
(Representative) (Title)

Dated: .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

36 APPENDIX B TO INTERMEDIATE REPORT AND RECOMMENDED ORDER

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in TRUCK DRIVERS LOCAL UNION NO. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, or in any other organization of our employees, by laying them off, or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of employment.

WE WILL, respectively, make whole the employees, whose names are listed below, for any loss of pay they may have suffered as a result of our discrimination against them.

Buffalo Linen Supply Company and Linen and Credit Exchange:

Joseph Homer
Joseph Gerace

Famous Linen Supply Co., Inc., and *Linen and Credit Exchange:*

Philip Trifiro
Carl Maiorana
Sam Scibetta
Al Scibetta
Hank Legatzke
Norm Axford
Dan Herberger
John Feraci

37 *Buffalo General Laundries Corp.* and *Linen and Credit Exchange:*

James Chambers
Robert Thompson
John H. Monaco
Ray Butler
James J. Finnerty
Ken Beiter
Charles Redanz
Edward Johnson
William Mullane

Modern Linen Supply Co. and *Linen and Credit Exchange:*

Charles Scibetta Francis Gigante
Robert Pabeljack

Morgan Linen Supply, Inc. and *Linen and Credit Exchange:*

Matty Comell	Dominic Guericio
Joe Zarcone	Ed Wojciak
Ed Kinney	Carmen Mambrino
George Meisenburg	Angelo Abrams
John Calabro	Mike De Angelo
Charles Sanfilippo	Leonard Pinkowski
Tony Muecio	Leonard Kuzora
John Balcerzak	James Maggio
Sam Greco	Richard Kalfas
Emil Guglielmo	Donald Dugan
Louis Butkowski	Joe Verone

Charles Seward

38 ERRATUM—November 12, 1953

The word *states* is hereby corrected to *stages* in line 55, page 3, of the Intermediate Report in the above case.

GEORGE A. DOWLING,
Trial Examiner.

Dated: November 12, 1953.

Before National Labor Relations Board

Decision and Order—July 26, 1954

On November 10, 1953, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in certain unfair labor practices, and recommended that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report together with a supporting brief. The Respondents also requested oral argument. The request is hereby denied, because the record, the excep-

tions, and the briefs, adequately present the issues and positions of the parties.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondents' exceptions and brief, and the entire record in this case, and hereby adopts the findings and conclu-
39 sions of the Trial Examiner only to the extent that they are consistent with this Decision and Order.

The Respondent-employers, together with Frontier Linen Supply, Inc., are members of the Respondent-association, Linen and Credit Exchange (hereinafter called the Association). Pursuant to collective bargaining on a multi-employer basis for approximately 13 years, the Respondents and the Union have been parties to successive collective bargaining agreements [1] covering the truck driver employees of the respective Employers. Prior to the expiration of the contract, containing an automatic renewal clause, which was to expire on April 30, 1953, the Union notified the Respondents of its desire to open negotiations to change the agreement. Thereafter, the parties negotiated unsuccessfully for a new contract, and, on May 26, 1953, the truck drivers employed by one member of the Association, Frontier, went on strike and picketed Frontier's plant. On May 27, the remaining Association members laid off their truck drivers after advising the Union that the layoff action was the result of the strike of Frontier's plant and that the employees would be recalled if the Union withdrew its picket line and ended the strike at Frontier. In the meanwhile, the parties continued their bargaining negotia-

[1] Negotiations on these contracts were conducted between representatives of the Association, acting on behalf of all its Employer-members, and representatives of the Union. After agreement by the respective representatives on a proposed bargaining contract, the proposal was submitted for approval to the members of the Association and the Union. Upon approval of the proposed agreement by the individual members of the Association and the Union, the agreement was signed by each Employer-member of the Association and by officials of the Union.

tions, and, on June 3, the Union and the Association executed a new contract, respectively terminated the strike and the lockout, and the truck drivers of the various Employers returned to work.

40 As pointed out by the Trial Examiner, the foregoing facts, mainly stipulated, present the case "largely in a vacuum." From these facts, and in the *absence* of specific evidence showing that the strike was likely to spread to the nonstruck Employers, the Trial Examiner, by reliance upon certain prior Board decisions, inferred that the Employers who were not struck engaged in unlawful retaliatory conduct. However, in these circumstances, we think the more reasonable inference is that, although not specifically announced by the Union, the strike against the one employer necessarily carried with it an implicit threat of future strike action against any or all of the other members of the Association. For, the Union's action represents a similar technique of exerting economic pressure to atomize the employer solidarity which is the fundamental aim of the multi-employer bargaining relationship. The calculated purpose of maintaining a strike against one employer and threatening to strike others in the employer group at future times is to cause successive and individual employer capitulations. Therefore, and in the absence of any independent evidence of antiunion motivation, we find that the Respondent's action in shutting their plants until termination of the strike at Frontier was defensive and privileged in nature, rather than retaliatory and unlawful.[2]

Contrary to the assertion of our dissenting colleague, our decision herein does not establish that the employer lockout is the corollary of the employees' statutory

41 right to strike. Upon the facts of this case, we find it unnecessary to pass upon that issue. We have done no more in this case than affirm the legal concept enunciated

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[2] See: *Leonard, et al. d/b/a Davis Furniture Company, et al.*, v. *N. L. R. B.*, 205 F. 2d 355 (C. A. 9), wherein the Court stated, ". . . the right of the employers to lock out temporarily all the employees is no more than equal to the right of the union of all the employees to call out the employees of one after another of the [employers] in the whipsawing manner above described."

by the Ninth Circuit Court of Appeals in the *Davis Furniture* case, which provides that a strike by employees against one employer-member of a multi-employer bargaining unit constitutes a threat of strike action against the other employers, which threat, *per se*, constitutes the type of economic or operative problem at the plants of the nonstruck employers which legally justifies their resort to a temporary lockout of employees.[3]

Accordingly, we find that the General Counsel has failed to show that the Respondents' temporary cessation of operations constituted an unfair labor practice and we shall, therefore, dismiss the complaint in its entirety.

ORDER.

IT IS HEREBY ORDERED that the complaint in this case be, and it hereby is, dismissed in its entirety.

Dated, Washington, D. C., July 26, 1954.

GUY FARMER, *Chairman.*
IVAR H. PETERSON, *Member.*
PHILIP RAY RODGERS, *Member.*
ALBERT C. BEESON, *Member.*
NATIONAL LABOR RELATIONS BOARD

42 ABE MURDOCK, Member, dissenting:

In this case for the first time in the history of the National Labor Relations Act and its amendments a majority of this Board is holding that the mere threat of a strike justifies discrimination against employees to discourage them from engaging in concerted activities for their mutual aid and protection.[4] Not only is this legal conclusion

[3] *Ibid*, wherein the Court also stated, ". . . the whipsawing threatened the loss of customers and a cessation of the [employers'] market."

[4] Section 7 of the Act, as amended, provides that: "Employees shall have the right to self-organization, to form, join, or assist labor organizations . . . and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." Section 8 (a) (1) of the Act makes it an unfair labor practice for an employer

unprecedented, but the stipulated facts reveal no basis for the inference that it was the threat of a possible strike at the plants of the Respondent employers which caused them as a defensive measure to lockout their employees. Indeed, that stipulation states the purpose of the lockout in the clearest language. According to the stipulation, the Union was informed by the Respondents "that the employees of the Respondents were locked out because of the strike at Frontier Linen Supply, Inc., and that if Local 449 would withdraw its picket line and cease the strike at Frontier Linen Supply, Inc., they would permit the employees of the Respondents to return to work." On these facts the conclusion is inescapable to me that the Respondent employers, members of a multi-employer association, locked out their employees for the purpose of breaking a strike at the single plant of an employer associated with them in collective bargaining.

I think this is a most obvious example of conduct violative of Sections 8 (a) (3) and (1) of the Act. Contrary to the majority's statement, the Respondents' unlawful
43 retaliatory conduct was not "inferred" by the Trial Examiner. He accepted the facts as stipulated and, finding no facts in the record to warrant the conclusion that the lockout was economically justified, held on the basis of all precedents that the lockout was discrimination within the meaning of these sections of the Act. The majority suggests that it was incumbent on the General Counsel to produce additional evidence, independent of the stipulated purpose of the lockout set forth above, to prove antiunion motivation. In other words, having produced evidence revealing a *prima facie* case of discrimination to discourage union activity, the General Counsel, according to the majority, should have produced more evidence to show that the Respondents *really* intended to do what they did. Typically, evidence of antiunion motivation is necessary in those

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"To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7." Section 8 (a) (3) of the Act makes it an unfair labor practice for an employer "By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

cases where the allegation of unlawful discrimination is countered by the defense that the discrimination was for cause rather than union activity. Where, as here, the admitted facts reveal that the discrimination resulted *solely* from concerted activity protected under Sections 7 and 13 of the Act, evidence of the Respondents' general bias against the Union is wholly unnecessary. Indeed, the Supreme Court of the United States has held that where encouragement or discouragement of union activity can reasonably be inferred from the nature of the discrimination specific proof of intent is unnecessary.[5] This rule of evidence is, as the court found, "but an application of the common law rule that a man is held to intend the foreseeable consequences of his conduct."

44 It is true the Board and the courts have held that certain lockouts are permissible where the record is clear that it was not economically feasible for the Respondent to keep its doors open under the threat of an immediate strike. Thus, in *Betts Cadillac Olds, Inc.*,[6] a group of automobile dealers were fearful that if they accepted automobile repair jobs they could not, under the threat of strike, assure their customers that the work would be done expeditiously. The Board affirmed the Trial Examiner's finding that the lockout in anticipation of the strike was justified. Similarly, a lockout to prevent spoilage of materials,[7] or one induced by the operative difficulties of running a plant where the union struck one of three integrated departments[8] has been held lawful. The issue was litigated at length, if inconclusively, in the *Morand Bros. Beverage*[9] and *Davis Furniture* cases.[10] In those cases the Board fully explicated its view that the lockout, unlike the strike, which

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[5] *Gaynor News Co. v. N.L.R.B.*, 347 U. S. 17.

[6] 96 NLRB 268.

[7] *Duluth Bottling Association*, 48 NLRB 1335.

[8] *International Shoe Company*, 93 NLRB 907.

[9] 91 NLRB 409; on remand, 99 NLRB 1448; 190 F. 2d 576 (C.A. 7), enforcing in part and remanding; 204 F. 2d 529 (C.A. 7), enforcing.

[10] 94 NLRB 279; on remand, 100 NLRB 1016, 197 F. 2d 435 (C. A. 9), remanding; 205 F. 2d 355 (C.A. 9), enforcement denied.

is a specific guaranteed right under Sections 7 and 13 of the Act, is not a lawful exercise of the employer's economic power unless, as in the *Betts Cadillac* and other cases, there are special business reasons making it impractical or impossible for the employer to continue operations. In the *Morand* case, the court affirmed the Board's finding of a violation of Sections 8 (a) (3) and (1). It added *dicta,* however, to the effect that a lockout of a temporary nature in anticipation of a threatened strike after an impasse in bargaining had been reached was in the category of defensive action on the part of an employer. In
45 the *Davis Furniture* case the court refused to enforce the Board's decision that the temporary lockout was violative of Sections 8 (a) (3) and (1), reversing, in effect, the Board's finding that the lockout was not necessitated by business reasons. The court held that the lockout was the result of the Union's announced whipsawing process, that the employers could not accept or give orders for furniture under the threat of a strike against all of the dealers in the multi-employer association. I deemed this question of such importance that I urged my colleagues on the Board to request the Supreme Court of the United States to take *certiorari* in this case, hoping that this high tribunal would settle the broad and important issue of whether the lockout, despite the express language of Sections 8 (a) (3) and 8 (a) (1) of the Act, was nothing more than the corollary of the Union's right to strike. A majority of the Board, however, declined to request *certiorari.*

In the *Morand* and *Davis Furniture* cases both courts referred to previous decisions of the Board, cited above, and indicated that their views were in conformance with the business necessity rule of the Board cases. It seems to me that if the language of Sections 8 (a) (3) and 8 (a) (1) of the Act, forbidding discrimination against or interference with union activities, has any meaning no lockout can be justified unless the employer produces at least some evidence that it was for cause. In the absence of such evidence, as in the instant case I can reach no other conclusion under the express language of the Statute than that the Respondents have violated Sections 8(a)(3) and 8(a)(1) of the Act. Certainly, the defensive nature of the lockout is not supported, as the majority asserts in this case,
46 by the absence of independent evidence of anti-union motivation. Nor does it help to pile inference o

inference, as the majority does here, to infer that the Respondents were faced with an actual threat of a strike simply because the Union struck one member of the Association and, on the basis of this inference, to make the further inference that the lockout resulted from the implied threat. In my opinion, such inferences are no substitute for actual evidence that the lockout was for cause. Moreover, as indicated above, any such inference is contrary to the stipulation of the parties, which reveals that the purpose of the lockout in this case was entirely offensve rather than defensive in nature.

I believe the Board was right in the *Morand* and *Davis Furniture* cases, which the majority is apparently reversing here. But even those ameliorating economic circumstances which might be said to justify a lockout in those cases are, as the Trial Examiner correctly found, absent here. There was no impasse in good faith collective bargaining here; that was no general strike authorization; there was no announcement by the Union that its strike against Frontier Linen Supply Co. was the first of planned successive strikes against each employer in the Association. To hold, as the majority does in the instant case, that a group of employers can lawfully lockout their employees solely because of a strike at the plant of another employer associated with them in collective bargaining increases to that extent the sore area of industrial conflict and impediments to interstate commerce which it is the express policy of this Act to minimize and decrease. Under the majority's decision, it now appears to be within the power of an employer to virtually nullify Sections 7 and 13 of the Act by the simple expedient of joining a multi-employer association.

47 But Congress has charged this Board with the duty of preserving the right of employees to engage in concerted activities for their mutual aid and protection. I would not lightly defeat that right. Certainly, I would not create out of cumulative inferences a defense to an invasion of rights specifically guaranteed in this Act. I would not find that this lockout was "defensive and privileged" when there is not the slightest evidence in the record before me that the Respondents were concerned about economic or operative problems in their own plants. If, indeed, an employer should have the right to use a lockout as the Re-

spondents have in this case on the theory that it is the corollary to the employees' right to strike, it seems to me that is something for Congress and not this Board to decide. The Statute, as I read it, now forbids such discrimination, and I would enforce it as it is written.

Dated, Washington, D. C., July 26, 1954.

ABE MURDOCK, *Member.*
NATIONAL LABOR RELATIONS BOARD

48 IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 86—October Term, 1955

Docket No. 23424

TRUCK DRIVERS LOCAL UNION No. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. OF L.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

OPINION FILED—FEBRUARY 14, 1956

Before:

CLARK, FRANK and WATERMAN,
Circuit Judges.

Petition to review and set aside an order of the National Labor Relations Board. GRANTED.

MCMAHON & CROTTY (Buffalo, New York), *for petitioner.*

THEOPHIL C. KAMMHOLZ, DAVID P. FINDLING, MARCEL MALLET-PREVOST, NORTON J. COME and DUANE B. BEESON, *for National Labor Relations Board.*

49 FRANK, *Circuit Judge:*

Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and

Helpers of America, A. F. of L. (hereinafter referred to as the Union) seeks review under § 10 of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C. § 151 *et seq.*) (hereinafter referred to as the Act) of an order of the National Labor Relations Board, dismissing an unfair-labor-practices complaint in which it is the charging party. The Union asks that the order of the Board be set aside. The decision of the Board is reported at 109 N. L. R. B. 447.

The case was tried on an agreed state of facts which are substantially as follows:

The Union represents all the truck-driver employees of the members of the Linen and Credit Exchange (hereinafter called the Exchange), an employer association representing eight employers in collective bargaining negotiations with the Union. However, it does not appear from the stipulated facts that the Union has been certified by the Board as bargaining agent for the association-wide unit. The terms of the agreements were worked out by the representatives of Exchange and the Union, and then submitted to the membership of Exchange and the Union for majority approval. When majority approval was given, the agreement was signed by each member of Exchange and by the Union. This had been the practice for the thirteen years preceding this controversy.

Sixty days before April 30, 1953, when the contract (which contained an automatic renewal clause requiring notice of a desire to change the contract to be given sixty days before the expiration date) was to expire, the Union notified Exchange of its desire to open negotiations to change the agreement. In March, 1953, negotiations were begun for a new collective bargaining agreement. Meetings were held during the succeeding weeks but no agreement was reached. On May 26, 1953, the truck-driver employees of Frontier Linen Supply, Inc., a member of Exchange, went on strike, but the employees of the other seven members remained on the job.

On the evening that the strike against Frontier began, Exchange notified the Union that the other members were laying off all their truck-driver employees until the strike at Frontier was ended. A lockout by these seven members of Exchange followed; at the succeeding negotiations, the

Union was told that the employees of all such members would be recalled to work if the picket-line at Frontier were withdrawn and the strike terminated.

On June 3, 1953, agreement was reached on a new contract which was uniformly applicable to all members of Exchange, including Frontier. Both the strike and the lockout were then terminated, and the employees of all the members returned to work. The Union thereupon filed a complaint with the Board charging Exchange, and the seven members who had locked out their employees, with unfair-labor practices in violation of § 8(a)(3) and (1) of the Labor Management Relations Act of 1947. The Board overruled the determination of the trial examiner that these employers had engaged in unfair labor practices by locking out the non-striking employees, and dismissed the complaint. The Board held that the strike against Frontier constituted a threat of a strike against all the other members of Exchange and that the non-struck members were justified in locking out their employees until the strike against Frontier ended.

The Union contends that there was no evidence of a threat of a strike against the employers other than Frontier. We think, however, that the Board reasonably inferred such a threat. For previously the Union had
51 conducted its negotiations with Exchange, but here, during such negotiations, it began a strike against Frontier, one member of the Exchange, although there was no peculiar facts concerning the Union's relations with that single member.

We come then to the question at the heart of the case, i.e., whether the threat of a strike legalized the lockouts by those employers against whom no strike had been called.

No provision of the L. M. R. A. of 1947, by its terms, generally specifically prohibits or authorizes lockouts by employers; and the Board, in its opinion, states that it does not hold that the employer's right to lock out its employees is the corollary of the employees' statutory right to strike. In addition, § 7 of the Act guarantees employees the right to engage in "concerted activities" for "their mutual aid or protection"; and it has been held that the right to strike and to support a strike constitutes "concerted activity"

which is protected by the statute.[1] Interference with this right by the employer constitutes an unfair labor practice under § 8 (c) (1) of the Act, and a lockout prompted by a purpose to defeat employee organization or otherwise protected concerted activities is violative of the Act.[2] Such a lockout would also violate § 8(a)(3) of the Act.[3]

52 The Board, in its brief, concedes, as it must, the basic principle that an employer who locks out its employees on mere threat of, or in anticipation of, a strike is guilty of an unfair labor practice. Up to the time of the decision in the instant case, the Board has held that only in unusual cases of economic hardship is an employer justified in locking out its employees when faced with a threatened strike. Thus, it has held that an employer may close down operations where (1) a spoilage of materials would otherwise result. *Duluth Bottling Association,* 48 N. L. R. B. 1335, 1336, 1359-60; (2) the prospective work stoppage in one of several integrated departments threatens to be of a recurrent nature so that it is difficult for the employer to plan production, *International Shoe Company,* 93 N. L. R. B. 907; or (3) the Union's refusal to give assurance of sufficient advance notice to allow repair work in progress to be finished and returned to customers, renders it economically

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[1] *Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America* v. *WERB,* 340 U. S. 383, 389-390; *International Union of Automobile, etc. Workers of America, C. I. O.* v. *O'Brien,* 339 U. S. 454, 456-457; *N. L. R. B.* v. *Fansteel Metallurgical Corp.,* 306 U. S. 240, 255-256.

[2] *N. L. R. B.* v. *Wallick & Schwaler Co.,* 198 F. (2d) 477 (C. A. 3); *N. L. R. B.* v. *Somerset Classics,* 193 F. (2d) 613 (C. A. 2), cert. den. 344 U. S. 816; *Olin Industries* v. *N. L. R. B.* 191 F. (2d) 613 (C. A. 5), cert. den. 343 U. S. 919. See also Koretz, Legality of the Lockout, 4 Syracuse L. Rev. 251, 253-254 (1953); Note, 3 Stanford L. Rev. 510, 517 (1951).

[3] *Associated Press* v. *N. L. R. B.,* 301 U. S. 103; *N. L. R. B.* v. *Schwaler Co.,* 198 F. (2d) 477 (C. A. 3); *N. L. R. B.* v. *Somerset Classics,* 193 F. (2d) 613 (C. A. 2), cert. den. 344 U. S. 816; *Morand Bros. Beverage Co.,* 99 N. L. R. B. 1448, 1460-1466 (on remand).

imprudent for the employer to continue operations, *Betts Cadillac Olds, Inc.*, 96 N. L. R. B. 268.[4]

The Board also concedes in its brief that, "prior to this case, a majority of the Board had interpreted the Act as precluding the non-struck members of an employer unit from utilizing a lockout." See *Morand Bros. Beverage Co.*, 99 N. L. R. B. 1448 (on remand); *Davis Furniture Company*, 94 N. L. R. B. 279, 100 N. L. R. B. 1016 (on remand). In the instant case, the Board departed from its previous position by adopting the position of the Ninth Circuit
53 in *Leonard* v. *N. L. R. B.*, 197 F. (2d) 435, 205 F. (2d) 335 (C. A. 9).[5]

In its second opinion in the *Leonard* case, 205 F. (2d) 355 (C. A. 9), which the Board cited in its opinion here, the Ninth Circuit apparently felt that "whipsawing" (calling a strike against one employer, in a multi-employer unit, at a time) caused economic and operational difficulties such as justified a lockout in cases like *Duluth Bottling Association, supra*. The court stated at 205 F. (2d) 255, 256:

> "The effect of such a recurrent whipsawing process is obvious. No one of the ten remaining dealers could know whether or not its store was next to have its employees sawed off in the continued whipping. Hence none could feel it safe to take orders from its customers which they would be embarrassed by non-deliveries to them. Likewise, no dealer was safe in

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[4] See also *Associated General Contractors*, 105 N.L.R.B. 767.

The Trial Examiner found that "* * * there was no showing that there were any economic considerations which justified the lockout, and none that the respondents' motive was in fact the protection of their economic interests." *Buffalo Linen Supply Co.*, 109 N. L. R. B. 447, 454.

[5] Other circuits, in dicta, have expressed views similar to those of the Ninth Circuit. *N. L. R. B.* v. *Continental Baking Co.*, 221 F. (2d) 427, 431-432 (C. A. 8); *N. L. R. B.* v. *Spalding Avery Lumber Co.*, 220 F. (2d) 673 (C. A. 8); *N.L.R.B.* v. *Morand*, 190 F. (2d) 576, 582 (C. A. 7).

placing orders for furniture with the manufacturers which might well find no employees to unload it in their stores or if so delivered to the stores it would lie as depreciating overstocked inventories."

We think this reasoning of the Ninth Circuit erroneous. The court's rationale would apply as well to cases involving only a single employer threatened with a strike. For he, too, would be faced with the prospect of disappointing his customers or being left with large depreciating inventories. Yet the Board correctly admits that he would not be justified in locking out his employees when they threaten to strike.

54. The Ninth Circuit also reasoned that its decision was necessary because a strike against any one member of an association would find that member too weak economically to stand up under a strike. We seriously doubt whether mere proof of such weakness of an employer, when threatened with a strike, justifies him in utilizing a lockout. But we need not here consider that question. For there is no proof here, and no finding, that any of the employers who locked out was thus economically weak. On the contrary, according to the stipulated facts, the sole reason for the lockouts was the strike against a single member of the association and a desire to end that strike.

The Ninth Circuit regarded as significant the linking of the term "strike and lockout" in the statute, and on that basis concluded that Congress recognizes the two as correlative economic powers. But we think the Board, in *Davis Furniture Company*, 100 N. L. R. B. 1015, 1019, correctly noted that, in each instance where those two words are linked, a particular strike activity is proscribed as unlawful, and the specific inclusion of "lockout" in this context may well have stemmed "from a desire to emphasize even-handed justice where union activity was being restricted." We think the Board in that case was also correct in saying: "We find nothing in the Act which equates lawful strikes and lockouts. On the contrary, only the right to strike is expressly reserved by Congress in Section 13 of the Act. The absence of any similar expressed

reservation of the right to lockout strongly argues against any intent to establish that right."[6]

55 The Board, although relying on the decision of the Ninth Circuit in *Leonard*, goes somewhat further in its reasoning. It seeks to support its new ruling in various ways: (1) Although the threat of a strike involved no peculiar economic hardship to any of the employers not on strike, nevertheless the case comes within the exceptional economic hardship category because the strike against Frontier involved the "destruction of the unitary system of bargaining." (2) Because of the previous bargaining with Exchange, a strike against one member was the equivalent of a strike against all.

The Board's position, no matter how stated, thus comes to this: (1) A union cannot be compelled to bargain in the first instance with several independent employers solely through an association of those employers; (2) however, if the union has so bargained for several years, then, by this voluntary action on its part, it becomes obligated to con-

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[6] In answering the argument that lockouts and strikes should be equated, the Board stated at 100 N. L. R. B. 1020-21, "* * * Nor is the notion correct that strikes and lockouts are 'commensurate weapons' in collective bargaining and that without the right to lockout an employer has no comparable economic weapon. Faced with an impasse in bargaining, the employer still retains control of the terms of employment so long as production continues. He is free to continue the existing terms without any contract, or, indeed, unilaterally to institute any previously proposed changes in those terms. These courses of action are obviously not available to the union * * * Even if the employer is unable to get replacements to permit continued operation in the face of a strike, he is generally in no worse position than the strikers. Both adversaries in the conflict would in such case be under the same economic pressure to terminate the strike and restore the flow of wages and profits. We see no reason in equity or justice to give to employers the privilege of extending the hardship and deprivations of industrial conflict to areas not directly involved, nor could such a privilege be squared with the basic policy of the statute to minimize industrial strife and interruptions to commerce."

tinue bargaining exclusively with the employer association, at least to the extent that, if it strikes against one member of the association, lockouts by the other members become lawful although the lockouts would otherwise be unlawful as unfair labor practices. Such a ruling constitutes unauthorized legislation by the Board in which we cannot acquiesce.

56 The Board has consistently held in the past that any employer may withdraw at will from a multi-employer bargaining unit, despite a history of multi-employer bargaining.[6a] Although it would seem only fair that the union be accorded the same privilege of voluntary withdrawal as is enjoyed by the employer, the Board has limited a union's right to withdraw from a multi-employer unit where there is such a history of multi-employer bargaining. In *Stouffer Corp.*, 101 N. L. R. B. 1331, the Board denied the union's petition, under §9(c) of the Act, in which the union sought to have the Board find the appropriate bargaining unit to be the employees of a single member of an employers' association rather than those of all members in the association with which the union had bargained for the preceding ten years.[7] And in *Morand Brothers Bev-*

[6a] See, *e.g.*, *Bearing & Rim Supply Co.*, 107 N. L. R. B. 101; *Association of Motion Picture Producers*, 88 N.L.R.B. 1155, 1161; *Johnson Optical Company, et al.*, 87 N. L. R. B. 539; *Air Conditioning Company of Southern California*, 81 N. L. R. B. 946, 952; *General Baking Company*, 73 N.L.R.B. 44, 47. See also Freidin, The Taft-Hartley Act and Multi-Employer Bargaining (1948) p. 16; Broderick, Representation Proceedings, University of Illinois Law Forum (1955) 223, 237-238; Note, 3 Stanford L. Rev. 510, 515.

This practice apparently was acceptable to Congress and was approved by it. See 1 Legislative History of The Labor Management Relations Act of 1947 (Government Printing Office 1948) p. 102.

[7] Our views on mutuality of treatment of unions and employers are limited to situations where, as here, an incumbent union seeks to withdraw from multi-employer bargaining and is not opposed in its claim as to the appropriate bargaining unit by another employee group. Thus we ex-

erage Co., 91 N. L. R. B. 409, the Board, passing on a
57 charge of unfair labor practice on the part of the union in refusing to bargain, intimated that the union must bargain to the point of an impasse with the employer association before it may validly revert to individual bargaining with each member of the association.

We see no rational basis for holding, in any context, that at any time any particular employer may, at his will, withdraw from bargaining through an employers' association of which he is a member, while a union is not equally free to discontinue bargaining through such an association:

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press no opinion on the desirability of Board decisions (1) refusing to let a non-incumbent union conduct a representation election in a single-employer unit where there has been a history of multi-employer bargaining and the incumbent union desires the multiple unit. See *Des Moines Packing Co.*, 106 N. L. R. B. 206; *Abbotts Dairies, Inc.*, 97 N. L. R. B. 1064; *American Writing Paper Co.*, 94 N. L. R. B. 1773; *Balaban & Katz (Princess Theatre)*, 87 N. L. R. B. 133; *Cloth Laying Appliances Corp.*, 78 N. L. R. B. 785; (2) denying employees of a single employer a decertification election where their union has, in the past, bargained on a multi-employer basis and desires to continue doing so; *Yardley Plastics Co.*, 111 N. L. R. B. 526; *Grand Rapids Fuel Co.*, 107 N. L. R. B. 1402; (3) denying the incumbent union's request to find a single-employer unit appropriate when a non-incumbent union seeks a representation election in the multi-employer unit with which bargaining had been carried on in the past; see *Archie Bernstein, et al.*, 98 N.L.R.B. 1144; *Belle Vernon Milk Co.*, 90 N. L. R. B. 717.

The Board has indicated that it will allow a union to withdraw from a multi-employer bargaining unit and bargain on an individual basis where the members of the employer association, with which the union had previously bargained, have consented, since it deems this an abandonment of multi-employer bargaining on the part of the employers. *Spalding Avery Lumber Co.*, 103 N. L. R. B. 1516; reversed on the ground that no abandonment of multi-employer bargaining had been intended by the employers, 220 F. (2d) 673 (C. A. 8).

with respect to any particular employer member.[8] On that account, were the issue here that of the appropriate unit in which the union must bargain—concerning which the exercise of the Board's discretion is usually accorded great weight[9]—we would be inclined to think that
58 the Board would "abuse" its discretion in forcing a union to continue bargaining with a multi-employer unit against the union's wishes. In any event, we think that the union here met the test established by the Board in the *Morand* case, i.e., an impasse in the bargaining with the association had been reached before the Union called a strike at Frontier.[10]

The issue here, however, is not the appropriate unit for collective bargaining purposes, but whether a lawful strike against one member of Exchange justified a lockout by the other members. There was no claim here that the Union had refused to bargain; nor did the Union seek certification as representative of a unit smaller than the association-wide unit as in the *Stouffer* case, *supra*. Consequently, here the Board had no occasion to exercise its discretion to determine the appropriate bargaining unit.[11] Hence, we do

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[8] The importance of mutuality of the right to withdraw was cogently put by dissenting Commissioner Styles in *Continental Baking Company*, 99 N. L. R. B. 777, 787-789. See also Note, 3 Stanford L. Rev. 510, 519 (1952).

[9] See, *e.g.*, *Packard Motor Car Co.* v. *N. L. R. B.*, 330 U. S. 485, 491; *N. L. R. B.* v. *Hearst Publications*, 322 U. S. 111, 132-135; *N. L. R. B.* v. *National Broadcasting Co.*, 150 F. (2d) 895, 898 (C. A. 2).

[10] The Union bargained with Exchange from March, 1953 to May 26, 1953, when it called a strike at Frontier after failing to reach agreement on the terms of a new contract. The trial examiner found that there was an "impasse" in the bargaining.

[11] Section 9(b) of the Act authorizes the Board to determine the "unit appropriate for the purposes of collective bargaining." The Board exercises its power under this section in representation proceedings under §9 of the Act to determine the exclusive bargaining representative of the employees in the unit which the Board deems is appropriate. The Board must also determine the appropriate unit for

not intrude on the exercise of the Board's discretionary power to make such a determination when we hold that the Union had a right to withdraw from the multi-employer unit by calling a strike against only one member of Exchange, at least to the extent that the calling of that strike did not render the lockout lawful.

The arguments against legalizing lockouts, merely because a multi-employer unit is involved, were set out by the Board itself in the *Morand* case, 91 N. L. R. B. 409, 412-415, where the Board said, *inter alia*: "In our opinion, the Act does not permit a discharge to reduce, by anticipatory action, the effectiveness of an expected strike
59 by a labor organization. The Board has held, with judicial approval, that an employer's economic interest in preventing a strike does not justify him in engaging in conduct of the type proscribed by the Act. The fact that the expected strike may be so timed or so directed as to place severe economic pressure on the employer does not, in our judgment, remove the strikers from the protection of the Act. Strike activity, actual or threatened, is concerted activity, and concerted activity does not cease to be protected merely because it is, or may be, effective, or because it subjects the employer to economic hardship. Any other view would not only be in derogation of the right of employees to engage in concerted activities but would also conflict with the express policy of the Act to minimize industrial strife. * * * Thus, if in the instant case we accepted the respondents' view * * *, we would be required to hold that a strike against one respondent * * * directly involving only about sixty of its employees, justified the other thirty-four respondents in discharging about seven hundred of their employees, even though they had not participated in the strike but had, in fact, remained at work. As stated in the brief filed on behalf of the General Counsel

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collective bargaining purposes when there is a charge by the union or employer that the other has committed an unfair labor practice under §8(a)(5) or (b)(3) by refusing to bargain in the appropriate unit.

Since the question of the "appropriate" unit is applicable only where the issue involves collective bargaining, it can have no relevance to strike activity by the union.

in support of the Intermediate Report: 'In this case, the effect of granting immunity to the discriminatory lockout by thirty-four employers, in reprisal against the strike against a thirty-fifth employer, would be to multiply the obstruction to commerce. It would set a sweeping precedent for the conversion of any single employer's dispute into an association-wide or industry-wide dispute. An isolated skirmish would become a civil war' • • • The logical corollary of the respondents' position is, therefore, that a union seeking to negotiate a contract with a group of employers, however large, must strike all or none. If it strikes less than all, its members will be deprived of the protection of the Act; if it strikes all, they will be protected.[12] We cannot give such an incongruous construction to an Act designated to minimize industrial strife. • • • To hold that employees in a multi-employer unit who remain at work may be treated as strikers, solely because of a strike by other employees, would involve the introduction of a new concept in labor relations—i.e., the vicarious or constructive strike. We know of no legislative or other warrant for introducing such a concept."

Multi-employer bargaining has never received the express sanction of Congress. It would stretch the usual canons of interpretation unduly far to conclude that, in enacting the Taft-Hartley Act, Congress gave legislative approval

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[12] The difficulty with which a union would be faced if it were placed in the dilemma set forth by the Board can easily be foreseen. For example, if a union representing automobile workers had once bargained collectively with a group representing all the automobile manufacturers, a subsequent strike against, say, the Ford Company would justify General Motors in locking out its employees, regardless of the patent fact that the anticipation of a strike against General Motors would cause it no exceptional economic hardship.

Thus, if we were to accept the Board's reasoning in the instant case, in any case where there is a history of multi-employer bargaining, if the union wishes to call a strike, it must wait until it can afford to strike all the employees in the unit; for if it struck only one, the non-struck members of the association could lock out their employees.

to all the previous Board rulings concerning such bargaining. [13] Even if we assume that it did, still the Board
61 at that time had not gone to the extreme lengths to which it now seeks to go in order to maintain the "stability of the employer unit." [14] We think Congress must have intended that such a radical innovation be left open for consideration by the joint committee it set up under §402 of the Act to study, among other things, "the methods and procedures for best carrying out the collective

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[13] It may well be that Congress, in enacting the Taft-Hartley Act, did not intend to interfere with the then established practice of multi-employer bargaining built up by the Board under the Wagner Act. See Freidin, *supra*, pp. 17-34.

A review of the legislative history of the amendments to the Act discloses sharp disagreement over the desirability of multi-employer bargaining. The House Bill (H.R. 3020, 80th Cong. 1st Sess., §9(f)(1)) as passed would have prevented certification of multi-employers units unless they meet certain conditions. Comment was varied and oft-times sharply critical. See 1 Legislative History of the Labor Management Relations Act of 1947 (Govt. Printing Office 1948) pp. 315, 325-327, 364, 377; 584, 612, 630, 636, 643, 653, 663, 672, 680, 716, 758-767, 772-775, 867-868. Senators Taft, Ball, Donnell, and Jenner proposed to meet the problem by limiting the unions eligible to act as representatives of those "composed solely of employees of one employer, or of employees employed in the same metropolitan district or county by different employers," and to further meet the problem by prohibiting an "international union from coercing a local union in the conduct of negotiations." *Id.* at 457; 2 Legislative History, 1217-1218. These proposals, which were not passed by the Senate, likewise elicited comment, favorable and unfavorable. *Id.* at 1217-1256, 1271-1302. Thereafter the proposals relating to multi-employer bargaining were eliminated in conference. 1 Legislative History 550-551.

[14] The cases concerning the question whether the non-struck employers in an association may lock out their employees after a strike against only one of the employer-members, were all decided after the passage of the Taft-Hartley Act of 1947.

bargaining process, with special attention to the effect of industry-wide or regional bargaining upon the national economy."

We feel the Board's action in restricting employees in the exercise of rights which Congress has expressly protected, merely to effectuate a policy as to which Congress has, as yet, expressed no clear opinion, constitutes an abuse of the Board's legitimate authority under the Act and a usurpation of the power of Congress. Neither the Board nor the courts may make so fundamental a
62 change in the existing law as that which would result from the Board's decision. The problems involved in legalizing the lockout in multi-employer situations are manifold, and their solution must be left to Congress.

Since the stipulated facts show no economic justification for the lockout, we hold that the lockout of non-striking employees constituted an interference with their statutory right to engage in concerted activity in violation of §8(a)(1) of the Act, and also constituted discrimination in the hire and tenure of employment of the employees because of the Union's action, thereby discouraging memberships in the Union in violation of §8(a)(3) of the Act.

The Board's order and decision dismissing the complaint must be set aside. The case is remanded to the Board for further proceedings in conformity with this opinion.

WATERMAN, *Circuit Judge* (dissenting):

The National Labor Relations Board decided in this case that the employer members of this multi-employer bargaining unit did not violate the National Labor Relations Act, 29 U. S. C. A. §151 *et seq.*, by locking out their employees when the Union, following several weeks of unsuccessful contract negotiations with the group, engaged in a strike against one of the members in support of its demands against all. The Board concluded that the strike against one member "necessarily carried with it an implicit threat of future strike action against any or all of the other members of the [multi employer bargaining unit.]"[1]
63 In these circumstances, and "in the absence of any independent evidence of anti-union motivation," the

[1] My colleagues accept this conclusion of the Board, holding that the Board reasonably inferred a threat of strike

Board viewed the lockout as "defensive and privileged in nature, rather than retaliatory and unlawful" since it was a necessary means of protecting "the employer solidarity which is the fundamental aim of the multi-employer bargaining relationship."

I think that the decision of the Board, which accords with the views of the three Courts of Appeals that have thus far had occasion to consider the problem,[2] is a reasonable and proper construction of the Act. For the reasons set forth below, I would affirm the Board's order dismissing the Union's complaint.

1. *Not every employer interference with a legitimate concerted activity is proscribed by the Act.* Thus, an employer is permitted to replace economic strikers, even though this amounts to a limitation on free exercise of the right to strike. *N. L. R. B.* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333. Similarly, where special "economic or operative" problems are presented, an employer may counter a strike threat with an anticipatory lockout. *Duluth Bottling Association*, 48 N. L. R. B. 1335 (spoilage of materials); *International Shoe Co.*, 93 N. L. R. B. 907 (interruption of production); and *Betts Cadillac Olds, Inc.*, 96 N. L. R. B. 268 (inability to finish repair work). In short, where the right to strike collides with legitimate employer interests, the Act leaves to the Board the task of "working out an adjustment." *Republic Aviation Corp.* v. *N. L. R. B.*, 324 U. S. 793, at 797-798.

64 2. *The employers in a multi-employer bargaining unit have a legitimate and vital interest in the continuance of the established unitary system of bargaining.*

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against the non-struck employers. The only important difference between the facts in this case and those in *Leonard* v. *N. L. R. B.*, 9 Cir., 197 F. 2d 435, 205 F. 2d 355, is that here the Union did not make a public announcement of its intentions.

[2] *Leonard* v. *N. L. R. B.*, 9 Cir., 197 F. 2d 435, 205 F. 2d 355; *Morand Bros. Beverage Co.* v. *N. L. R. B.*, 7 Cir., 190 F. 2d 576, 582; *N. L. R. B.* v. *Continental Baking Co.*, 8 Cir., 221 F. 2d 427, 431-432; *N. L. R. B.* v. *Spalding Avery Lumber Co.*, 8 Cir., 220 F. 2d 673, 675.

In this case the eight members of the Exchange are linen supply businesses competing with each other within the Buffalo metropolitan area, and the Union represents the drivers of all Exchange members. The joinder of the employers for purposes of bargaining as a unit with the Union in such circumstances presents a familiar pattern in industrial relations.[3] It allows small employers to bargain on an equal basis with a powerful, industry-wide union, and at the same time avoids the competitive disadvantages resulting from non-uniform contractual terms.[4]

3. *The Board's accommodation of the legitimate interest of the employers in group bargaining and the right of the employees to strike in support of their demands is a reasonable and proper one.* Group bargaining benefits the union and the public as well as the employers. The union minimizes its organizational and administrative expenses; it can more readily standarize wages and other conditions of employment; and it gains security against raiding by other labor organizations.[5] Moreover, insofar as the public
65 is concerned, the experience of the Board and many other specialists in the labor field has shown that strikes within these units tend to be infrequent, and that there is more likely to be full acceptance on both sides of the

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[3] The Board, in its brief, citing Monthly Labor Review, vol. 64, pp. 398, 409 (1947), says that in 1947 there were over 5,000 multi-employer units covering some 4,000,000 employees.

[4] See, *e.g.*, Freiden, The Taft-Hartley Act and Multi-Employer Bargaining (Univ. of Pennsylvania Press, 1948), p. 5; Garrett and Tripp, Management Problems Implicit in Multi-Employer Bargaining (Univ. of Pennsylvania Press, 1949), pp. 2-3; Kerr and Fisher, Multiple-Employer Bargaining: The San Francisco Experience (Univ. of California Press, 1948), pp. 27-30; Hall, Impact of the Bargaining Unit on Labor Management Relations (Second Annual Conference on Labor, N. Y. U., 1949), pp. 39-40.

[5] Kerr and Randall, Multiple-Employer Bargaining in the Pacific Coast Pulp and Paper Industry (Univ. of Pennsylvania Press, 1948), p. 9; Hall, *op. cit.* note 4 *supra*, pp. 43-44.

principle of resolving differences through negotiation.[6] In my judgment the decision from which I am dissenting would tend to undermine these beneficent developments and to convert industrial relations into a pattern of continuous piecemeal strife.

The Board argues that the purposes of multi-employer bargaining are to create uniform terms and conditions of employment at the plants of all employers in the unit, and to achieve on a case-by-case basis an approximate balance of power between organized labor and organized management. From the employers' point of view, the Board says, the major advantage of multi-employer bargaining is that it may give the employers sufficient bargaining power to withstand the divisive pressures of whipsawing. When a union representing all of the employees of a multi-employer group engages in a strike against one of the members of the group, even while pretending to bargain with the group as a whole, it is directly attacking an important interest of all the employers in the group—their interest in group bargaining. The Board feels that the multi-employer bargaining unit will not long survive if the non-struck members are not permitted under such circumstances to use their countervailing force against the Union. I think we should accept the experienced judgment of the Board on such matters.

66 The present decision will tend to destroy the equality of bargaining power and reduced incidence of strikes which have been the hallmarks of multi-employer bargaining.

Moreover, I agree with the Board that the decision of the Court will permit the Union to keep the benefits which it has derived from multi-employer bargaining, while at the same time nullifying the consideration that made such unit desirable from the employers' standpoint. That is to say

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[6] Hall, *op. cit.* note 4 *supra*, p. 44; Kerr and Fisher, *op. cit.* note 4 *supra*, p. 40; Kerr and Randall, *op. cit.* note 5 *supra*, pp. 27-31; Bahrs, The San Francisco Employers' Council (Univ. of Pennsylvania Press, 1948), pp. 37-39; MacDonald, Bob and Sheifer, Labor Relations in Milk Distribution in the New York Metropolitan Area (Matthew Bender & Co., 1951), pp. 575-577; Hill, Teamsters and Transportation (Am. Council on Public Affairs, 1942), p. 202; Note, 65 Harv. L. Rev. 353, 355.

that both sides gain certain benefits and accept certain restrictions when they agree to engage in multi-employer bargaining. The union gains important organizational, raiding and standardization advantages, while the employers gain a protection against whipsawing. This decision would deprive employers of this *quid pro quo*. The Union is enabled to strike the employers one at a time without running the deterrent risks of a unit-wide strike.[7] In this situation, "the right of the employers to lock out temporarily all the employees is no more than equal to the right of the union of all the employees to call out the employees of one after another of the [employers] in the whipsawing manner above described." *Leonard* v. *N. L. R. B.*, 9 Cir., 205 F. 2d 355, 357-358.

4. *There is nothing in the Act of in its legislative history which deprives the Board of power to adjust the conflicting but legitimate interests of employers and employees in this situation.* The Act protects the rights of employees to strike in support of their demands, but this protection is not absolute. It is well settled that employers are not guilty of unfair labor practices when they act in protection of legitimate and vital interests of their own, even though such acts necessarily impinge on the concerted activity of employees. The Act is not a detailed blueprint, but a general guide; and it is the function of the Board to adjust the conflicting interests of employers and employees.[8]

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[7] The majority decision relies heavily on the idea that the Union should be accorded the same freedom of voluntary withdrawal from a multi-employer bargaining unit as the Board has accorded to individual employers. This may be so, but in this case the Union did not seek to withdraw from the unit. It attempted to retain the advantages of group bargaining by pretending to bargain with the multi-employer group, while at the same time taking strike action against one of the members of the group.

[8] "A statute expressive of such large public policy as that on which the National Labor Relations Board is based must be broadly phrased and necessarily carries with it the task of administrative application. There is an area plainly covered by the language of the Act and an area no less

Multi-employer bargaining is almost as old as the Act itself. The Board has established many multi-employer bargaining units pursuant to 29 U. S. C. A. §159(b), and, when established, employers and unions have the reciprocal duty to bargain in that group. 29 U. S. C. A. §158(a)(5) and (b)(3). Efforts to limit or destroy multi-employer bargaining were made in 1947, but the amended Act (the Taft-Hartley Act) left multi-employer bargaining undisturbed. I do not think it is properly inferable that Congress, by its inaction, meant to leave the question of multi-employer bargaining to be dealt with in future legislation.

On the contrary, considering the long history of
68 multi-employer units, it seems more reasonable that Congress intended that the Board should continue its established administrative practice of certifying multi-employer units, and intended to leave to the Board's specialized judgment the inevitable questions concerning multi-employer bargaining bound to arise in the future.

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plainly without it. But in the nature of things Congress could not catalogue all the devices and stratagems for circumventing the policies of the Act. Nor could it define the whole gamut of remedies to effectuate these policies in an infinite variety of specific situations. Congress met these difficulties by leaving the adaptation of means to end to the empiric process of administration. The exercise of the process was committed to the Board, subject to limited judicial review. Because the relation of remedy to policy is peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy. On the other hand, the power with which Congress invested the Board implies responsibility—the responsibility of exercising its judgment in employing the statutory powers." *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 194.

69 In the United States Court of Appeals for the Second Circuit

No. 23424

TRUCK DRIVERS LOCAL UNION NO. 449, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE—Filed March 13, 1956

Before Clark, Frank and Waterman, Circuit Judges

This cause came on to be heard upon the petition of Truck Drivers Local Union No. 449, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL to review an order of the National Labor Relations Board dated July 26, 1954. The Court heard argument of respective counsel on October 14, 1955, and on February 14, 1956 being fully advised in the premises, handed down its decision setting aside the Board's order and remanding the case to the Board in conformity therewith, it is hereby

Ordered, adjudged, and decreed that the Board's order of July 26, 1954 be and it hereby is set aside and remanded to the Board for further proceedings in conformity with the Court's opinion.

(S.) JEROME N. FRANK,
Judge, United States Court of Appeals for the Second Circuit.

(S.) STERRY R. WATERMAN,
Judge, United States Court of Appeals for the Second Circuit.

70 [File endorsement omitted.]

71 Clerk's Certificate to foregoing transcript omitted in printing.

72 Supreme Court of the United States, October Term, 1956

No. 103

[Title omitted]

ORDER ALLOWING CERTIORARI.—Filed October 8, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1956 405561 - 477